

# **Exhibit 3**

NEW YORK  
LONDON  
SINGAPORE  
PHILADELPHIA  
CHICAGO  
WASHINGTON, DC  
SAN FRANCISCO  
SILICON VALLEY  
SAN DIEGO  
BOSTON  
HOUSTON  
LOS ANGELES  
HANOI  
HO CHI MINH CITY  
ATLANTA

# Duane Morris®

FIRM and AFFILIATE OFFICES

STEPHANIE L. JACOBS  
LEGAL ASSISTANT  
212.471.1837  
sljacobs@duanemorris.com

[www.duanemorris.com](http://www.duanemorris.com)

BALTIMORE  
WILMINGTON  
MIAMI  
BOCA RATON  
PITTSBURGH  
NEWARK  
LAS VEGAS  
CHERRY HILL  
LAKE TAHOE  
MYANMAR  
OMAN  
A GCC REPRESENTATIVE OFFICE  
OF DUANE MORRIS  
  
MEXICO CITY  
ALLIANCE WITH  
MIRANDA & ESTAVILLO

March 11, 2014

## BY FEDEX

Natalie M. Hanlon-Leh  
Faegre Baker Daniels LLP  
3200 Wells Fargo Center  
1700 Lincoln St.  
Denver, CO 80203

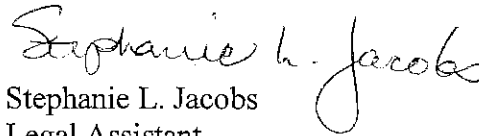
Re: **Infringement of POPSICLE® FIRECRACKER® Trade Dress**

Dear Ms. Hanlon-Leh:

Enclosed please find another copy of Greg Gulia's February 17, 2014 letter, with the intended Exhibits.

We regret the oversight and appreciate your patience.

Sincerely,

  
Stephanie L. Jacobs  
Legal Assistant

Enclosure  
/slj

NEW YORK  
LONDON  
SINGAPORE  
PHILADELPHIA  
CHICAGO  
WASHINGTON, DC  
SAN FRANCISCO  
SILICON VALLEY  
SAN DIEGO  
BOSTON  
HOUSTON  
LOS ANGELES  
HANOI  
HO CHI MINH CITY  
ATLANTA

## Duane Morris®

FIRM and AFFILIATE OFFICES

GREGORY P. GULIA  
DIRECT DIAL: +1 212 692 1027  
PERSONAL FAX: +1 212 202 6014  
E-MAIL: gpgulia@duanemorris.com

[www.duanemorris.com](http://www.duanemorris.com)

BALTIMORE  
WILMINGTON  
MIAMI  
BOCA RATON  
PITTSBURGH  
NEWARK  
LAS VEGAS  
CHERRY HILL  
LAKE TAHOE  
MYANMAR  
OMAN  
A GCC REPRESENTATIVE OFFICE  
OF DUANE MORRIS  
  
MEXICO CITY  
ALLIANCE WITH  
MIRANDA & ESTAVILLO

February 17, 2014

### **BY FEDEX**

Mr. Mike Wells  
President and Chief Executive Officer  
Wells Enterprises, Inc.  
One Blue Bunny Drive  
Le Mars, Iowa 51031

### **Re: Infringement of POPSICLE® FIRECRACKER® Trade Dress**

Dear Mr. Wells:

This firm is outside trademark litigation counsel to Conopco, Inc. d/b/a Unilever ("Unilever"), the owner of the famous POPSICLE® trademark ("the POPSICLE® Mark") and related trade dress in the United States. We are writing to you in connection with the recent changes to Wells Enterprises' ("Wells") BOMB POPS packaging, which infringes the well-known trade dress used by Unilever in conjunction with its famous POPSICLE® Mark, and especially, the trade dress for Unilever's POPSICLE® FIRECRACKER® frozen confections.

Unilever and its predecessors in interest have been selling frozen confection products bearing the POPSICLE® Mark for more than ninety years. Sales of such products have been enormous, and Unilever has invested tremendous amounts of time, money and other resources in connection with the sale and advertising of its POPSICLE® brand products. As part of those efforts, Unilever has developed a distinctive trade dress which is used on the packaging in which products bearing the POPSICLE® Mark are sold ("the POPSICLE® Trade Dress"), consisting of:

(a) a yellow background;

DUANE MORRIS LLP

1540 BROADWAY NEW YORK, NY 10036-4086

PHONE: +1 212 692 1000 FAX: +1 212 692 1020

Duane Morris

Mr. Mike Wells  
Wells Enterprises, Inc.  
February 17, 2014  
Page 2

(b) an oval-shaped burst in which the POPSICLE® Mark appears in white lettering against a red and blue background (“the POPSICLE® Logo”); and

(c) a graphic depiction of the actual specific POPSICLE® product contained in the packaging.

As a result of Unilever’s extensive advertising, marketing and sale of products bearing the POPSICLE® Trade Dress, that trade dress has come to be associated in the minds of consumers solely with Unilever and its POPSICLE® brand products.

Unilever has also developed a variation of the POPSICLE® Trade Dress which is used in connection with its POPSICLE® FIRECRACKER® frozen confection products (“the FIRECRACKER® Trade Dress”). The FIRECRACKER® Trade Dress, a representation of which is enclosed as Exhibit A, consists of:

(a) a yellow background;

(b) the POPSICLE® Logo;

(c) the mark FIRECRACKER® in bright red letters; and

(d) a grouping of three of the FIRECRACKER® products, which are red, white and blue rocket-shaped ice pops, pointed in an essentially upward direction, with one of the pops in the foreground and the other two pops to either side and slightly behind the one in the foreground.

As a result of Unilever’s extensive advertising, marketing and sale of its POPSICLE® FIRECRACKER® products bearing the FIRECRACKER® Trade Dress, that trade dress has come to be associated in the minds of consumers solely with Unilever and its POPSICLE® FIRECRACKER® products.

Unilever has taken notice that Wells has changed the packaging for its BOMB POPS frozen confections so that it now closely simulates the FIRECRACKER® Trade Dress. The previous BOMB POPS packaging, a representation of which is enclosed as Exhibit B, consisted of:

(a) a blue background with no yellow anywhere on the package;

(b) the words “The Original” directly beneath the BOMB POP name in a straight line against a solid red background;

Duane Morris

Mr. Mike Wells  
Wells Enterprises, Inc.  
February 17, 2014  
Page 3

(c) a depiction of two of the BOMB POP products, which are also red, white and blue rocket-shaped ice pops, side-by-side, which appear to be moving across the package from left to right, and with one appearing to be slightly forward of the other; and

(d) the words "12 POPS" in blue lettering against a white star-shaped background.

The current BOMB POPS trade dress ("the Infringing Trade Dress"), a representation of which is enclosed as Exhibit C, consists of:

(a) a background which is now approximately half yellow;

(b) the words "The Original" in white lettering against a red and blue, oval-shaped background similar to our client's logo and again in the lock up with "Bomb Pop";

(c) the BOMB POP mark in bright red letters; and

(d) a grouping of three BOMB POP products, pointed in an essentially upward direction, with one of the pops in the foreground and the other two pops to either side of, and slightly behind, the pop in the foreground.

Our client has also noted that your company has removed "Blue Bunny" from the packaging. This curious change further increases the likelihood of confusion between the respective products.

The drastic changes made to the BOMB POP packaging so that it now closely simulates the FIRECRACKER® Trade Dress can lead only to the conclusion that Wells is deliberately attempting to create confusion in the marketplace, to mislead consumers into believing that its BOMB POPS products are in fact Unilever's FIRECRACKER® products or are somehow associated with Unilever and its POPSICLE® products, and to trade upon the extremely valuable goodwill which Unilever enjoys in its marks and trade dress and specifically, the FIRECRACKER® Trade Dress. Wells' intentions are made abundantly clear by the fact that BOMB POPS products being sold in the Infringing Trade Dress are now being mixed in with Unilever's POPSICLE® branded products on retail shelves, thereby increasing the likelihood of confusion.

Our client also has recognized Wells' use of "The Original" as an obvious attempt to imply that your company is the original ice pop brand which is clearly not the case.

Duane Morris

Mr. Mike Wells  
Wells Enterprises, Inc.  
February 17, 2014  
Page 4

Lest there be any doubt as to the confusion being created by virtue of Wells' use of the Infringing Trade Dress, recent market research shows that more than 60% of respondents believed that BOMB POPS are made by the same company that makes POPSICLE® products.

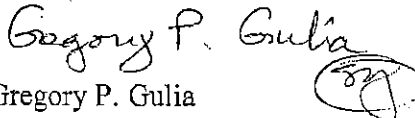
Accordingly, we hereby demand, on behalf of Unilever, that you provide us with written confirmation, by the close of business on February 25, 2014, that Wells:

- (a) will immediately cease all use of the Infringing Trade Dress; and
- (b) will not, in the future, utilize any trade dress which copies, simulates or is otherwise confusingly similar to, the POPSICLE® Trade Dress or the FIRECRACKER® Trade Dress.

While we are hopeful that this matter can be resolved amicably, please be advised that Unilever takes the protection of its intellectual property rights very seriously, and will, if we do not receive the written confirmation requested above, take whatever additional steps it deems appropriate in order to enforce its extremely valuable rights in the POPSICLE® Trade Dress and the FIRECRACKER® Trade Dress.

This letter is written without prejudice to any of Unilever's claims, rights and/or remedies, all of which are expressly reserved.

Very truly yours,

  
Gregory P. Gulia

GPG:slj

# **Exhibit A**





# **Exhibit B**



# **Exhibit C**

**NEW LOOK!**  
Same Great  
Taste!



**12**  
**POPS**

**THE ORIGINAL**  
**BARB POP**

**the Original**

Cherry, Lime & Blue Raspberry

1.75 FL OZ (51.7 mL) EACH • 21 FL OZ (621 mL)

**A FROZEN CONFECTION**  
ARTIFICIAL FLAVOR AND COLOR ADDED